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In re Application of :
TAYLOR et al. :
Application No.: 10/524,252 :
PCT No.: PCT/US03/21271 : DECISION ON
Int. Filing Date: 09 July 2003 : PAPERS UNDER 37 CFR 1.42
Priority Date: 09 July 2002 :
Attorney Docket No.: 16218.013 :
For: MICROFINE ZINC-GLYCEROL :
COMPLEXES :

This decision is in response to the declaration filed 15 December 2005 which is being treated as a request under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 09 July 2003, applicants filed the above-identified international application which claimed a priority date of 09 July 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 09 January 2005.

On 09 February 2005, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a petition to revive under 37 CFR 1.137(b). In a Decision on Petition dated 20 May 2005, applicants' petition to revive was granted.

On 06 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497 and the surcharge fee required under 37 CFR 1.492(e). The notification set a two-month time limit in which to respond.

On 15 December 2005, applicants filed a declaration executed by David Fairlie, Robert M. Moffitt and Margaret Taylor, on behalf of deceased inventor, Reginald Taylor.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed on 15 December 2005 is executed by David Fairlie, Robert M. Moffitt and Margaret Taylor as the "legal representative" of the deceased inventor, Reginald Taylor. The declaration submitted appears to have been executed by the proper parties under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2). 37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide residence, citizenship, and post office address for the legal representative. The declaration filed on 15 December 2005 provides the residence, citizenship, and post office address for only one individual and it is unclear whether this information is for the legal representative or the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is REFUSED.

Applicants are required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within TWO (2) MONTHS from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by the either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box

1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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